

**STATE OF UTAH  
DIVISION OF WATER QUALITY  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
SALT LAKE CITY, UTAH**

**§401 Water Quality Certification No. DWQ-2019-04001**

Pursuant to §401 of the *Federal Clean Water Act*(CWA), the Utah Department of Environmental Quality (DEQ), Division of Water Quality (DWQ) certifies that the applicant has provided reasonable assurance that any discharges associated with the proposed project will not violate surface water quality standards, or cause additional degradation in surface water not presently meeting water quality standards. In accordance with Section 401(a)(1) of the CWA [33 U.S.C. Sec. 1341(a)(1)], DWQ hereby issues this §401 Water Quality Certification provided any listed conditions are met and included in the corresponding U.S. Army Corps of Engineers (USACE) 404 Permit.

**Applicant:** Utah State Parks and Recreation  
Mr. Dan Clark  
1594 W North Temple  
Salt Lake City, Utah 84116

**Project:** The applicant is proposing to annually maintain three separate beaches along the Bear Lake Shoreline: Rendezvous Beach 320 acres, Rainbow Cove 48 acres and North Eden 23 acres. Lower lake levels have allowed vegetation to encroach closer to current water levels, resulting in a loss of recreational beaches and creation of safety hazards for boaters. Work would be conducted through discing or harrowing of these beaches to prevent regrowth of vegetation. Also, included with this work would be the removal of dead trees and stumps that are a hazard to boaters. This annual maintenance would help in preventing vegetation growth along these beaches when water levels are low and control sand flies. The work would take place below the ordinary high water mark and in areas with less than 5% hydrophytic vegetation. Based on the available information, the overall project purpose is to improve boater safety and enhance the beaches for recreation. The applicant believes there is a need to improve and provide safer and better beaches at these three locations.

**Location:** Along the eastern and southern shoreline of Bear Lake: Rendezvous Beach 41.84787°, -111.34204°; Rainbow Cove 41.97377°, -111.27137°; and North Eden Beach 42.00631°, -111.26450° in Rich County, Utah

**Watercourse(s):** Bear Lake

**Effective Date:** **June X, 2019**

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Erica Brown Gaddis, PhD  
Director, Division Water Quality

## Table of Contents

I.	Background.....	3
A.	Other Applicable Permits.....	3
B.	Project Description/Purpose.....	3
C.	Site Description.....	3
II.	Certification Conditions.....	4
A.	Project Specific Conditions.....	4
B.	General Conditions .....	5
III.	Aquatic Resource Impacts .....	7
A.	Impacts to Water Features.....	7
IV.	Modifications .....	8
V.	Other Information .....	9
A.	Fees .....	9
B.	Liabilities .....	9
VI.	Public Notice and Comments.....	10
A.	Public Notice Dates.....	10
B.	Public Notice Comments/Response .....	10

Appendix A: Site Location

Appendix B: Site Project Outlines

Appendix C: Site Aquatic Resource Delineations

## **I. Background**

### **A. Other Applicable Permits**

1. USACE Permit : SPK-2006-50137

### **B. Project Description/Purpose**

The applicant is proposing to annually maintain three separate beaches along the Bear Lake Shoreline: Rendezvous Beach 320 acres, Rainbow Cove 48 acres and North Eden 23 acres. Lower lake levels have allowed vegetation to encroach closer to current water levels, resulting in a loss of recreational beaches and creation of safety hazards for boaters. Work would be conducted through disking or harrowing of these beaches to prevent regrowth of vegetation. Also, included with this work would be the removal of dead trees and stumps that are a hazard to boaters. This annual maintenance would help in preventing vegetation growth along these beaches when water levels are low and control sand flies. The work would take place below the ordinary high water mark and in areas with less than 5% hydrophytic vegetation. Based on the available information, the overall project purpose is to improve boater safety and enhance the beaches for recreation. The applicant believes there is a need to improve and provide safer and better beaches at these three locations. The attached drawings provide additional project details.

### **C. Site Description**

The site is located along the eastern and southern end of Bear Lake and below the ordinary high water mark. This area has a 1% to 2% grade, sloping generally to the west and north. There are approximately 391 acres of lake bed within the project area with sporadic areas of shrubs and trees.

## **II. Certification Conditions**

### **A. Project Specific Conditions**

#### **1. Best Management Practices (BMPs)**

- a. Areas may only be cleared when water level is low, leaving it exposed. No work shall be completed in the open water.
- b. When areas are being cleared of vegetation, silt fence will be used to protect Bear Lake and Big Creek.
- c. Construction machinery used should be clean to prevent the possible transfer of aquatic invasive species.

#### **2. Migratory Birds**

- a. Due to the potential of migratory birds to inhabit the site, no nesting vegetation (trees, shrubs, and herbaceous vegetation) should be cleared during the typical nesting and breeding period from April 1<sup>st</sup> through August 30<sup>th</sup>.
- b. If maintenance activities extend into April, a nesting clearance survey should be completed by a qualified biologist no sooner than five days prior to work planned in that area. If the site is clear of nests, work should take place within the five days following the survey or it should be surveyed again. If active nests are identified within 100 feet of the planned vegetation clearance, work should be postponed until after the breeding season or the active nest site is no longer in use as assessed by a qualified biologist.

#### **3. Reporting**

- a. If the USACE requires mitigation, the final plan shall be sent to the DWQ for our records. Any reports that may be required as part of the mitigation, shall additionally be sent to the DWQ.
- b. Each year that maintenance is completed, the Utah State Parks and Recreation shall send DWQ a letter notifying them that it was conducted that year and an approximation to what extent.

## B. General Conditions

### 1. Good Housekeeping

- a. Applicant and their subcontractors shall ensure that all workers involved are continuously aware of the water quality protection measures before the start and during the construction period.
- b. Retain a copy of this §401 Certification and its affiliated USACE 404 Permit onsite.

### 2. Stormwater and BMPs

- a. Water quality standards in associated water resources could be violated unless appropriate Best Management Practices (BMPs) are incorporated to minimize the erosion-sediment and nutrient load to any adjacent waters during project construction. The applicant shall not use any fill material which may leach organic chemicals (e.g. discarded asphalt), noxious weeds/seeds or nutrients (e.g., phosphate rock) into waters of the State.
- b. Construction activities that disturb one acre or more, or are part of a common plan of development, are required to obtain coverage under the Utah Pollutant Discharge Elimination System (UPDES) Stormwater General Permit for Construction Activities, Permit No. UTR300000<sup>[1]</sup>. The permit requires the development of a Storm Water Pollution Prevention Plan (SWPPP) to be implemented and updated from the commencement of any soil disturbing activities at the site, until final stabilization of the project. The SWPPP should include, but not limited to, final site maps and legible plans, location of stormwater outfalls/discharges, as well as information pertaining to any stormwater retention requirements.
- c. Dewatering activities, if necessary during construction, may require coverage under the UPDES General Permit for Construction Dewatering, Permit No. UTG070000<sup>[2]</sup>. The permit requires water quality monitoring every two weeks to ensure that the pumped water is meeting permit effluent limitations, unless water is contained onsite.

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<sup>1</sup>Link: <https://documents.deq.utah.gov/water-quality/permits/updes/DWQ-2017-003485.pdf>

<sup>2</sup> Link: <https://deq.utah.gov/legacy/permits/water-quality/utah-pollutant-discharge-elimination-system/docs/utg070000.pdf>

- d. A project within a Municipal Separate Storm Sewer System (MS4) jurisdiction, must comply with all the conditions required in that UPDES MS4 Permit and associated ordinances. No condition of this 401 Certification shall reduce or minimize any requirements provided in the MS4 Permit. In the case of conflicting requirements, the most stringent criteria shall apply.
- e. Utah Administrative Code R317-2 requires that the Applicant cannot increase water turbidity by 10 NTUs. If violated shall immediately notify the DWQ. A fact sheet describing the Utah Department of Environmental Quality's (DEQ) recommended environmental BMPs for construction sites are located on our web site [<sup>3</sup>].

### 3. Spills

- a. Refueling equipment and storage of lubricants and fuels will occur at designated staging areas and in state approved containers. The storage and refueling areas will be at least 500 feet from the edge of the nearest waterbody (including wetlands), at least 200 feet from the nearest private water supply well, and at least 100 feet from the nearest municipal water supply well.
- b. Utah Annotated Code 19-5-114 requires that any spill or discharge of oil or other substances which may cause pollution to waters of the State, including wetlands, must be immediately reported to the Utah DEQ Spill Hotline at (801) 536-4123, a 24-hour phone number.

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<sup>3</sup>Link: <https://deq.utah.gov/legacy/businesses/business-assistance/construction/index.htm>

### III. Aquatic Resource Impacts

All Waters of the State of Utah (defined in Administrative Code (UAC) R317-1-1) are protected from pollutant discharges that affect water quality by narrative standards (see UAC R317-2-7.2); broadly, discharges should not become offensive or cause undesirable conditions in human health effects of aquatic life. In addition, some particularly sensitive classes of water are further protected from deleterious effects of specific pollutants by application of numeric criteria to designated (beneficial) uses of that water body. Listed below are the water features within the project area and their associated designated beneficial uses (see UAC R317-2-6):

#### A. Impacts to Water Features

##### 1. Bear Lake

- a. Class 2A: Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.
- b. Class 3A: Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.
- c. Class 4: Protected for agricultural uses including irrigation of crops and stock watering

#### **IV. Modifications**

- A. Without limiting DWQ's discretion to take other actions in accordance with UAC R317-15, and, as applicable, 33 USC 1341, DWQ may modify the Certification to add, delete, or modify the conditions in this Certification as necessary and feasible to address:
1. Adverse or potential adverse project effects on water quality of designated beneficial uses that did not exist or were not reasonably apparent when this certification was issued;
  2. TMDLs;
  3. Changes in Water quality standards;
  4. Any failure of Certification conditions to protect water quality or designated uses when the Certification was issued; or
  5. Any change in the Project or its operations that will adversely affect water quality of designated beneficial uses when this Certification was issued.



## **V. Other Information**

### **A. Fees**

1. The legislatively-mandated fee for the 2019 fiscal year is \$100.00/hour, for review and issuance of the §401 Water Quality Certification [<sup>4</sup>]. A quarterly invoice will be sent once plans have been approved. Your payment is due within 30 days.

### **B. Liabilities**

1. Applicant must acquire all necessary easements, access authorizations and permits to ensure they are able to implement the project. This §401 Certification does not convey any property rights or exclusive privileges, nor does it authorize access or injury to private property.
2. This §401 Certification does not preclude the applicant's responsibility of complying with all applicable Federal, State or local laws, regulations or ordinances, including water quality standards. Permit coverage does not release the applicant from any liability or penalty, should violations to the permit terms and conditions or Federal or State Laws occur.

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<sup>4</sup>Link: <https://documents.deq.utah.gov/admin/2019-fee-schedule.pdf>

## **VI. Public Notice and Comments**

### **A. Public Notice Dates**

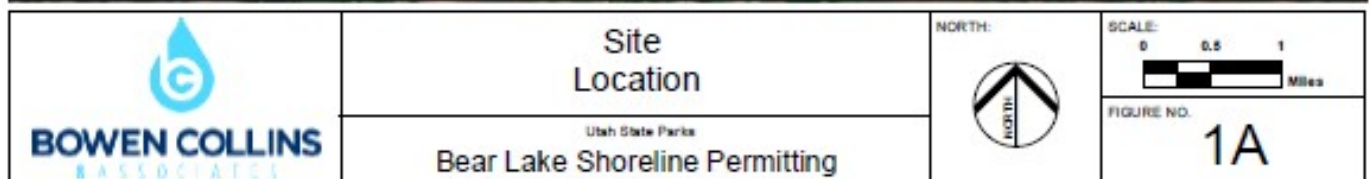
1. USACE Permit No. SPK-2006-50137: 04/19/19 – 05/17/19
2. Utah DEQ Certification No. DWQ-2019- 04001:

### **B. Public Notice Comments/Response**

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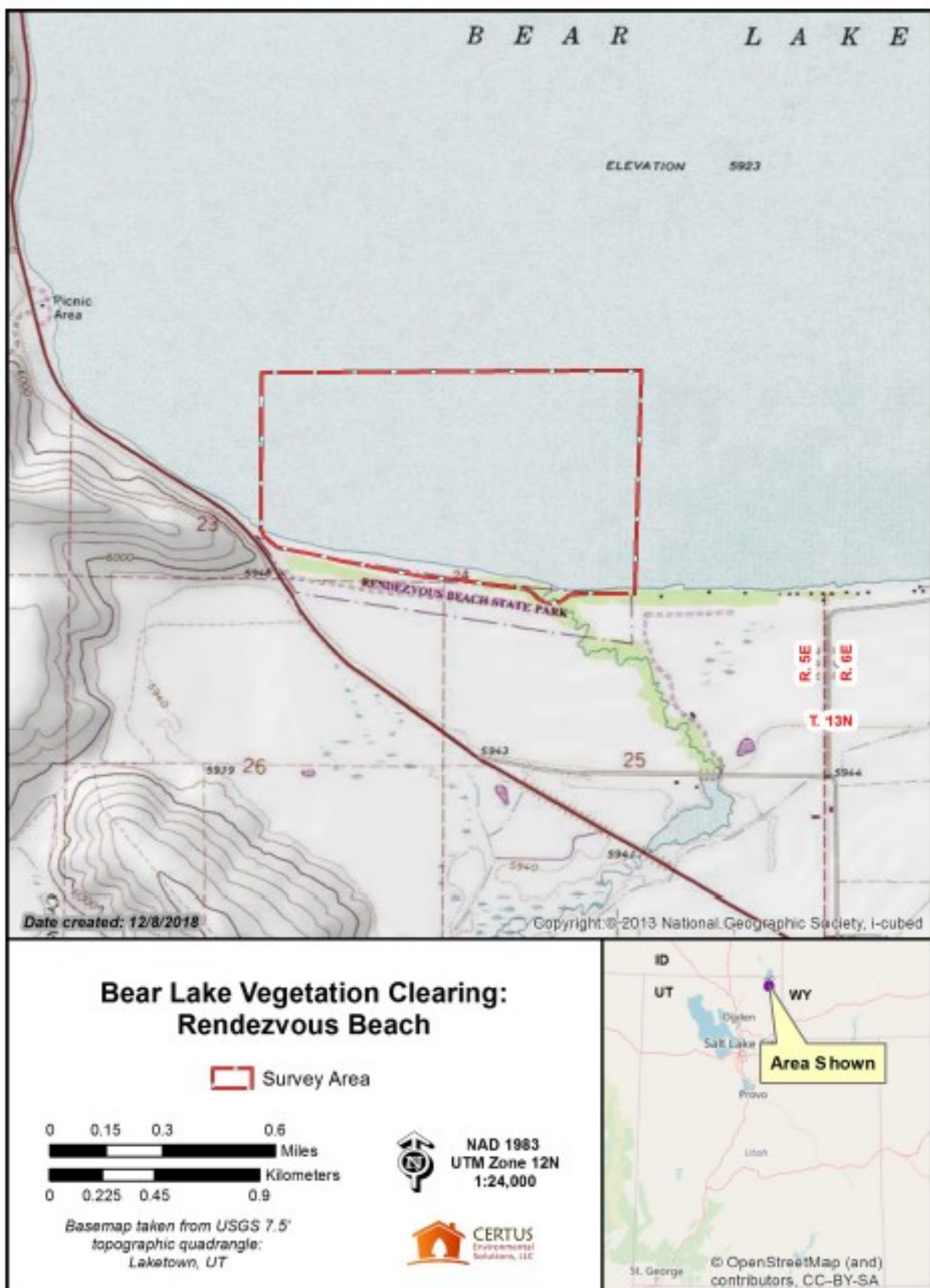
## **Appendix A: Site Location**

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## **Appendix B: Site Project Outlines**

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**Figure 3.** Location of cultural resources survey area; Rendezvous Beach



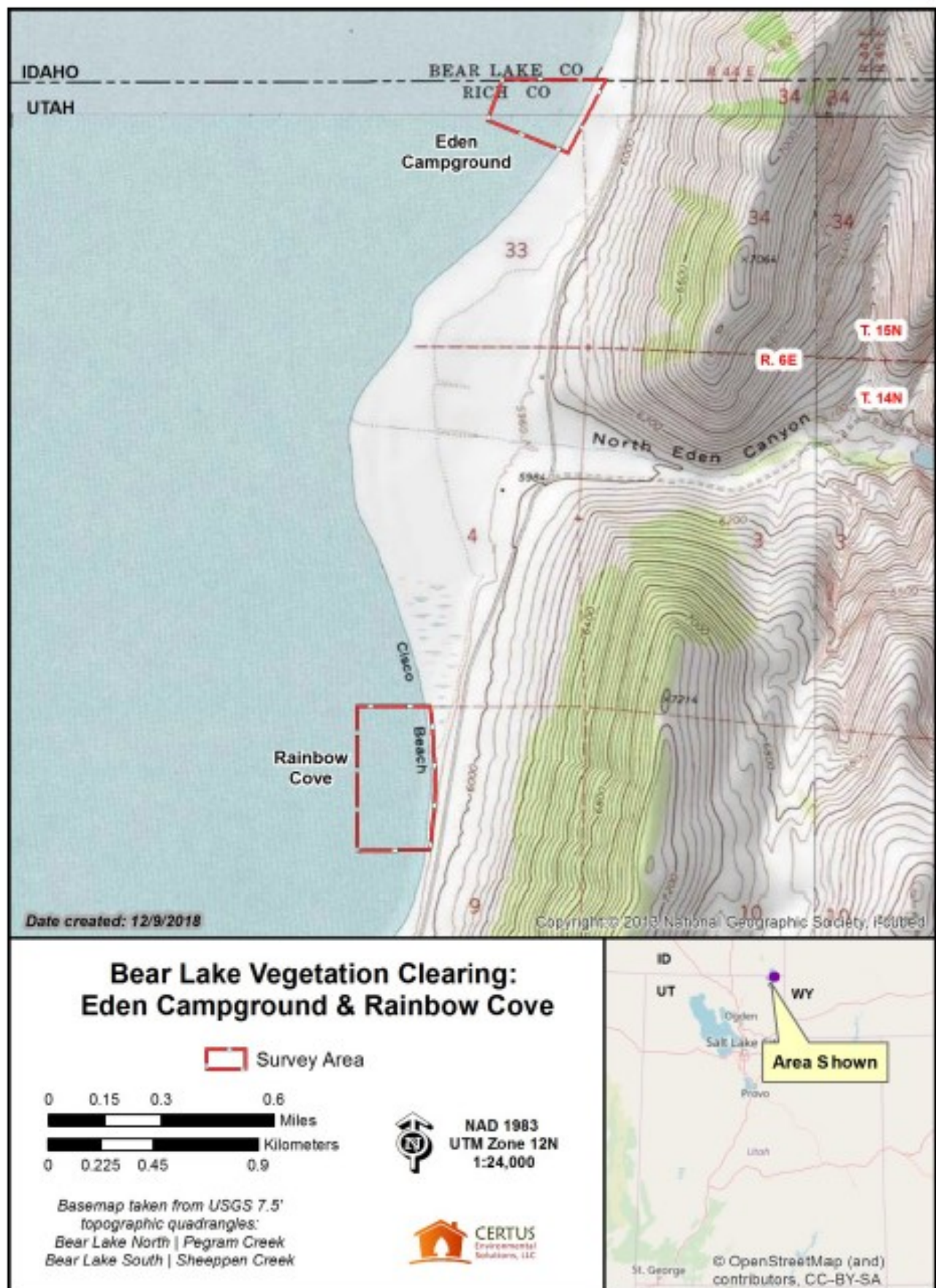


Figure 4. Location of cultural resources survey area; Eden Campground & Rainbow Cove

## **Appendix C: Site Aquatic Resource Delineations**

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